

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT KNOXVILLE

Assigned on Briefs July 30, 2008

STATE OF TENNESSEE v. MITCHELL HENRY GRIBBLE

Appeal from the Circuit Court for Blount County
No. C-16062,-16063,-16064 Michael M. Meares, Judge

No. E2007-02231-CCA-MR3-CD - Filed November 18, 2008

Appellant, Mitchell Henry Gribble, pled guilty in the Circuit court of Blount County to two counts of theft, under \$500, one count of theft over \$1,000 and one count of burglary of a vehicle. The trial court sentenced him to an effective sentence of four years. Appellant was ordered to serve seven days and serve the remainder on supervised probation. After failing to attend his meetings with his probation officer, testing positive for opiates during a drug screening, failing to submit a DNA sample and failing to complete a drug and alcohol assessment, Appellant's probation officer filed a probation violation warrant. The trial court held a hearing and at the conclusion, revoked Appellant's probation. After a thorough review of the record, we find ample support for the trial court's decision. Therefore, we affirm the decision of the lower court.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court is Affirmed.

JERRY L. SMITH, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J. and CAMILLE R. McMULLEN, J., joined.

J. Liddell Kirk, Knoxville, Tennessee, for the appellant, Mitchell Henry Gribble.

Robert E. Cooper, Jr., Attorney General and Reporter; Leslie E. Price, Assistant Attorney General; Mike Flynn, District Attorney General and Clinton Frazier, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

On July 24, 2006, Appellant pled guilty to one count of burglary of a vehicle and one count of theft, both stemming from an incident on June 7, 2006; one count of theft over \$1,000, stemming from an incident on April 22, 2006; and one count of theft stemming from an incident on April 17, 2006. Appellant was sentenced to two years, eleven months and twenty-nine days, four years, and eleven months and twenty-nine days, respectively. All four sentences were to be served concurrently. Appellant was ordered to serve seven days in jail and allowed to serve the remainder

of his sentence on supervised probation. As part of Appellant's probation, the trial court ordered Appellant to have a drug and alcohol assessment.

On December 4, 2006, Appellant's probation officer filed a Probation Violation Report alleging that Appellant violated his probation in the following ways:

Rule #6: In that the subject has failed to report for September and November 2006.

Rule #8: In that the subject was drug screened on October 26, 2006 and found positive for Opiates. Subject stated that he was using pain medication and was advised to bring on October 27, 2006 a print-out from the pharmacy of his medication. Subject failed to bring the documentation.

On October 28, 2006, Officer Yarnell of Maryville, responded to a suspicious person call at Camellia Trace Apartments. Upon arrival contact was made with Mitchell Gribble. Gribble has been sitting in his car for about two hours for no apparent reason. It was learned that Gribble was trying to buy Morphine pills from a Mr. Oxidine. Upon a search of Gribble's vehicle and under the front [drivers] side floor mat, a spoon with a clear liquid in it was found. Gribble verified it was Morphine. Two hypodermic needles were also found. Gribble informed the officer that he is diabetic and would take Morphine tablets, dissolve them and inject the liquid into his veins. No charges were filed.

Rule #10: In that the subject has failed to have the alcohol and drug assessment, as ordered by the court.

Rule #11: In that the subject has failed to have the DNA testing.

The trial court issued a Probation Violation Warrant on December 4, 2006.

On August 23, 2007, the trial court held a hearing on the probation violations. The probation officer testified that Appellant called her on July 28, 2006, to inform her that he was a patient at Blount Memorial Hospital. She scheduled his initial interview for August 11. Appellant was present at this interview. She went over the rules with him and informed him that he needed to have his DNA sample submitted and who to contact concerning the DNA sample. She also gave him information about where to go for his drug and alcohol assessment. She scheduled his next appointment for August 31, 2006. He failed to appear.

On September 29, 2006, Appellant called the probation officer to inform her he was on his way to the emergency room. She had not heard from him between their August 11 initial interview and this telephone call. On October 6, 2006, the probation officer received a telephone call from a social worker at St. Mary's Hospital. Appellant reported to the probation officer on October 11, after he was released from the hospital. Appellant had not yet submitted his DNA sample or undergone his drug and alcohol assessment.

The next meeting was scheduled for October 26, 2006. At the October 26 meeting, Appellant tested positive for opiates at a drug screening. Appellant did not provide the probation officer with documentation that he was taking medication for pain. On October 28, an Officer Yarnell submitted an incident report to the probation officer stating that Appellant admitted to the officer that he was using morphine.

The probation officer had set the next meeting for November 14, 2006. Appellant failed to appear at this meeting. The probation officer testified that, at the time of the revocation hearing, she had heard nothing from Appellant since he failed to show for the November 14 meeting. Also at the time of the hearing, the probation officer had not received confirmation that Appellant had submitted a DNA sample or had completed a drug and alcohol assessment.

The probation officer also testified that Appellant was living in a camper in his father's backyard and had not obtained viable employment. She stated in her opinion, that Appellant was not a good candidate for probation.

On December 27, 2006, Appellant had been arrested for violation of probation. On January 2, 2007, the trial court released Appellant for treatment at Blount Memorial Hospital. Appellant was required to return to jail upon his release from the hospital. When he was released, he did not return to jail, and on January 31, a capias was issued for Appellant's arrest.

Appellant testified that he suffered from severe depression and diabetes. Appellant had to have his toe amputated and later developed a staph infection in his leg. He had been to the hospital numerous times because of the infection, and the doctors have been unable to cure him. Appellant stated that he has not been working and that his father has been helping him financially. He testified that he had worked until 2001 when he was diagnosed with diabetes. Regarding his conviction for theft from a vehicle, Appellant denied knowing that his co-defendant was stealing radiators from the vehicles. Appellant stated that his co-defendant told him that the vehicle owners had given them permission to take the radiators.

Appellant stated that he was using morphine and "roxyiodone" for his diabetic neuropathy. Appellant admitted that he missed three of his probation appointments. Appellant admitted that he did not contact his probation officer when he was admitted to the hospital in November. He did not have anyone in his family contact her. He also admitted that he had not undergone his drug and alcohol assessment.

At the conclusion of the hearing, the trial court made the following findings:

The Court finds that [Appellant] has materially violated the rules of his probation in that he failed to report as required; he tested positive for the use of opiates; he failed to submit to a drug and alcohol assessment; and he failed to have his DNA tested. Based upon those material violations of the rules of his probation, the Court does revoke his probation and sentences him to serve the balance of his term.

ANALYSIS

Appellant's sole issue on appeal is that the trial court erred in revoking his probation. A trial court may revoke probation and order the imposition of the original sentence upon a finding by a preponderance of the evidence that the person has violated a condition of probation. T.C.A. §§ 40-35-310 -311. After finding a violation of probation and determining that probation should be revoked, a trial judge can: (1) order the defendant to serve the sentence in incarceration; (2) cause execution of the judgment as it was originally entered, or, in other words, begin the probationary sentence anew; or (3) extend the probationary period for up to two years. *See* T.C.A. §§ 40-35-308(c) & -311(e); *State v. Hunter*, 1 S.W.3d 643, 647-48 (Tenn. 1999). The decision to revoke probation rests within the sound discretion of the trial court. *State v. Mitchell*, 810 S.W.2d 733, 735 (Tenn. Crim. App. 1991). Revocation of probation and a community corrections sentence is subject to an abuse of discretion standard of review, rather than a de novo standard. *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). An abuse of discretion is shown if the record is devoid of substantial evidence to support the conclusion that a violation of probation has occurred. *Id.*

In the case at hand, the record contains more than substantial evidence to prove that Appellant violated the conditions of his probation. Appellant himself testified that he missed scheduled meetings with his probation officer, failed to submit a DNA sample and failed to complete a drug and alcohol assessment. In addition, he tested positive for opiates at a drug screening, and although he claimed he was taking drugs for pain related to a medical condition, he never provided documentation to that effect. We conclude that the trial court did not abuse its discretion in revoking Appellant's probation and ordering him to serve the balance of his sentences in confinement.

Therefore, this issue is without merit.

CONCLUSION

For the foregoing reasons, we affirm the decision of the trial court.

JERRY L. SMITH, JUDGE